IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8341 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KAMLESHBHARTHI @ KALIO S/O LALUBHARTHI GOSWAMI

Versus

PC PANDE

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Appearance:

1. Special Civil Application No. 8341 of 2001

MR AJAY S JAGIRDAR for Petitioner No. 1

GOVERNMENT PLEADER for Respondents No. 1-3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/01/2002

ORAL JUDGEMENT

1. The petitioner came to be detained under Prevention of Anti Social Activities Act (PASA for short) by virtue of an order passed by the Commissioner of

Police, Ahmedabad City, Ahmedabad on August 6, 2001 in exercise of power under Section 3 of the said Act. The petitioner is branded as immoral traffic offender. The detaining authority took into consideration one offence registered against the detenu with Amraiwadi Police Station and statements of two anonymous witnesses indicating activities of the detenu. It is indicated that the detenu runs a brothel and his activities have resulted into disturbance to public order. The detaining authority was satisfied that the detenu is required to be immediately prevented from pursuing his illegal activities and resorting to ordinary law may not be effective and, therefore, the petitioner was detained under PASA.

2. The learned Counsel, Mr.Jagirdar, appearing for the petitioner submitted that the detenu was on police remand when the order was passed. The authority observed that on completion of police remand, when he is produced before the Court, he may apply for bail and after his release on bail he may pursue his activities. According to Mr.Jagirdar, this ground of the detaining authority cannot be considered as genuine and that there was no need for exercising powers under Section 3 of the Act. In support of his contention, he relied on "Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others", AIR 2000 SC 3675. He, therefore, urged that the petition may be allowed. The petition is opposed to by the learned AGP, Mr.Joshi.

3. A plain reading of the grounds of the detention it indicates that the detenu was on police remand when the order was passed. The authority observed that in order to immediately prevent the detenu from pursuing his illegal activities, he is required to be detained under PASA. The Apex Court, in the case of "Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others" (Supra), observed that the likelihood of detenu's moving an application for bail is different from likelihood to be released on bail and likelihood of detenu's moving an application for bail is not sufficient ground for recording the satisfaction and that there is need to exercise powers under Section 3 of the Act. The satisfaction recorded by the authority stands vitiated and the order, therefore, cannot be permitted to stand. The petition deserves to be allowed on this ground alone.

4. The petition is allowed. The order of detention passed by the Commissioner of Police, Ahmedabad City, Ahmedabad on August 6, 2001, detaining the petitioner, Kamleshbharthi alias Kalio, Son of Lalubharthi Goswami,

is hereby quashed and set aside. The petitioner, Kamleshbharthi alias Kalio, Son of Lalubharthi Goswami, be released from detention forthwith, if not required in any other case. Rule is made absolute with no orders as to costs. Direct service is permitted.

10-1-2002 (A. L. Dave, J.)

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